

## SECOND DIVISION

[ G.R. No. 104504, October 31, 1997 ]

### **PEDRITO PASTRANO, PETITIONER VS. HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

#### **D E C I S I O N**

##### **MENDOZA, J.:**

This is a petition for review on *certiorari* of the decision of the Court of Appeals, affirming the conviction of petitioner Pedrito Pastrano of the crime of Illegal Possession of Firearms by the Regional Trial Court of Oroquieta City, Branch 13.

The facts are as follows:

On February 13, 1989, a group of students went to see Capt. Rodolfo Mañoza, then intelligence operations officer of the Philippine Constabulary, at Camp Naranjo, at Oroquieta City. They reported having seen Clyde Pastrano beaten up by his father, petitioner Pedrito Pastrano. The students were willing to testify but expressed fear of the petitioner who, according to them, had firearms. Clyde Pastrano had died and it was suspected he had been the victim of foul play.

On February 20, 1989, two sons of Pedrito Pastrano by his estranged wife - James Clement G. Pastrano and Clinton Steve G. Pastrano - also saw Capt. Mañoza, seeking his assistance in connection with the death of their brother Clyde. The brothers reported that their father and his common-law wife were keeping unlicensed firearms in their house. They executed a joint affidavit on February 20, 1989 in which they stated that they had personal knowledge of the fact that their father Pedrito Pastrano was keeping three (3) firearms of different calibers in the bedroom of his house.

On the basis of the affidavit of the Pastrano brothers, Capt. Mañoza applied for a search warrant on the same day.

After examining complainant and the two brothers, Judge Teodorico M. Durias of the Municipal Trial Court of Oroquieta City (Branch I) issued a search warrant which Capt. Mañoza and his men later served at the residence of Pedrito Pastrano at Capitol Drive, Oroquieta City. Seized from petitioner's dwelling was a sack containing the following:

One (1) Revolver Cal. 22 Magnum with Serial No. 07345. Made in Germany ROHMGMBH SONTHEM/BRENZ;

One (1) round ammunition for Cal. 22 Magnum;

One (1) Revolver Cal. 32 with Serial No. 233833 Colt Made in U.S.A.;

Six rounds of live Ammunition for Cal. 32 revolver.

On the basis of the evidence thus seized, petitioner Pedrito Pastrano y Capapas and his common-law wife, Erlinda Ventir y Sanchez, were charged with Illegal Possession of Firearms and Ammunition as penalized under P.D. No. 1866, §1. The information against them alleged:

That on or about the 20th day of February 1989 and during the period prior thereto, in Barangay Lower Langcangan, Oroquieta City, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring together and collaborating with each other, did then and there keep, possess and maintain at their residence known as Door #1, Aguja Apartment, Capitol Drive, Lower Langcangan, Oroquieta City, the following firearms:

One (1) Revolver Cal. 22 Magnum with Serial No. 07345, Made in Germany ROHM GMBH SONTHEM/BRENZ;

One (1) round Ammunitions for Cal. 22 Magnum;

One (1) Revolver Cal. 32 with serial No. 233833 Colt. Made in U.S.A.;

Six (6) rounds live ammunition for Cal. 32 Revolver.

Without having the necessary license, authority and/or permit duly issued to or granted them by the proper government agency/official as determined by law.

Contrary to law.

On January 14, 1991, the trial court rendered a decision finding petitioner guilty, even as it found his common-law wife, Erlinda Ventir, innocent of the charge. The dispositive portion of its decision read:

WHEREFORE, this Court finds accused Erlinda Ventir innocent of the crime charged but finds accused Pedrito Pastrano guilty beyond reasonable doubt of illegal possession of firearms and ammunitions for which he is sentenced to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS and ONE (1) DAY reclusion temporal, as maximum. No pronouncement as to costs.

SO ORDERED.

On appeal, the Court of Appeals upheld the decision of the trial court. Hence, this petition for review.

Petitioner contends:

1. The Court of Appeals erred as a matter of law in affirming the findings of the trial court convicting the accused of the crime of illegal possession of firearms despite clear and convincing proof that accused is duly authorized to carry firearms per PTCFOR No. 40448 and Mission Order No. 01-06-89.

2. The Search Warrant issued by Judge Teodorico Durias is invalid for failure to comply with the basic requirements of the Constitution. Hence, the evidence obtained is inadmissible in court.

The first ground for the petition is without merit. P.D. No. 1866, §1 punishes "any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery tool or instrument used or intended to be used in the manufacture of any firearm or ammunition." Section 2 of the Rules and Regulations Implementing P.D. No. 1866 provides that

Any person or entity desiring to import, manufacture, deal in, receive, acquire, buy, sell, dispose of or possess any firearm, part of firearms, ammunition, or explosives or machinery, tool or instrument used or intended to be used in the manufacture of any firearm, parts of firearm, ammunition or explosives shall first secure the necessary permit/license/authority from the Chief of Constabulary, except that in the case of application to manufacture firearms, ammunition or explosives, the corresponding permit/license shall be issued, only with the prior approval of the President.

The possession of any firearm without the requisite permit/license is thus unlawful. In this case two witnesses for the prosecution, both from the Philippine Constabulary, testified that petitioner had no license to possess the firearms seized from him. Sgt. Eugenio Salingay, officer-in-charge of the licensing of firearms at Camp Naranjo in Oroquieta City, testified that petitioner and his common-law wife Erlinda Ventir were not in the list of registered firearm holders in Misamis Occidental. Neither did they have any pending application for a gun permit.

Capt. Rodolfo Mañoza, on the other hand, testified that he had made inquiries from the Southern Command in Zamboanga City whether the firearms seized from petitioner were organic firearms of that command and was informed that they did not belong to that command. He also inquired from the commanding officer of the 55th Infantry Battalion whether Pedrito Pastrano and Erlinda Ventir were members of the Citizens Armed Forces Geographical Unit (CAFGU) in Oroquieta City, and he found they were not.

Petitioner admitted ownership of the .32 cal. revolver bearing Serial No. 233833 (Exh. J) but claimed that the .22 cal. magnum revolver with Serial No. 07345 (Exh. I) belonged to his cousin, a certain Luz Laspiñas, who gave it to him merely for safekeeping. Petitioner claimed that he had bought the .32 cal. revolver in January 1989 from the grandson of the late Atty. Felipe Tac-an who had a license to possess the gun. Petitioner produced a Mission Order dated January 9, 1989 issued to him by Lt. Col. Celso A. Undag, Philippine Army, Deputy Brigade Commander, and a Mission Order issued to Luz Laspiñas, also by Lt. Col. Undag, as authority for them to possess the firearms in question. He also presented a Permit to Carry Firearm Outside of Residence dated January 1, 1989 signed by Major General Ramon Montaño, then chief of the Philippine Constabulary, for the firearm he purchased and